

**WORKERS' COMPENSATION APPEALS BOARD  
STATE OF CALIFORNIA**

**LAURA RODRIGUEZ, *Applicant***

**vs.**

**99 CENTS ONLY STORES, in liquidation; SELF-INSURER'S SECURITY FUND,  
administered by TRISTAR RISK MANAGEMENT, *Defendants***

**Adjudication Numbers: ADJ19199519; ADJ19199522**

**Van Nuys District Office**

**OPINION AND ORDERS  
DISMISSING PETITION  
FOR RECONSIDERATION,  
GRANTING PETITION FOR REMOVAL  
AND DECISION AFTER REMOVAL**

Self-Insurers' Security Fund (SISF), seeks reconsideration and/or in the alternative removal of the "Order Denying Petition for Joinder of Party Defendant California Self-Insurers' Security Fund" (Order) issued on December 2, 2024, by the workers' compensation administrative law judge (WCJ). The WCJ found, in pertinent part, that SISF is not required to file a petition for joinder, but need only file a notice of change in administrator.

SISF argues that a formal order of joinder is required for it to participate in these proceedings.

The WCJ filed a Report recommending that the Petition for Reconsideration be dismissed and that we deny the Petition for Removal.

We have considered the allegations in the Petition for Reconsideration and/or Removal, the contents of the Report, and we have reviewed the record. Based upon our review of the record, we will dismiss the Petition to the extent that it seeks reconsideration as the denial of joinder was a non-final order. We will treat the Petition as one seeking removal, grant removal, and as our Decision After Removal, we will rescind the December 2, 2024 Order and return this matter to the trial level for further proceedings.

## FACTS

Although this matter has not proceeded to a formal hearing, the following facts do not appear to be in dispute. Applicant has claimed multiple injuries while working for 99 Cents Only Stores, which was self-insured, but has subsequently declared bankruptcy. On November 26, 2024, SISF filed a petition to join itself in these proceedings along with a petition for change of third-party administrator and a notice of representation. On December 2, 2024, the WCJ issued an order denying joinder as follows:

On November 26, 2024, the Defendant, California Self-Insurers' Security Fund, administered by Tristar Risk Management, Inc., by and through its attorney of record, Gale, Sutow & Associates, APC, has filed a petition to join itself as a party defendant dated November 26, 2024. Having considered the petition, it is denied without prejudice for the following reason(s):

According to the Application for Adjudication of Claim dated April 30, 2024, the Applicant filed her claim of injury against 99 Cents Only Stores, LLC. Given that the permissibly self-insured entity has entered liquidation, California Self-Insurers' Security Fund, assumed financial liability for the shuttered company, thereby taking over all the rights and responsibilities of the insolvent self-insured employer.

While a WCJ is empowered to join additional parties necessary for the full adjudication of the case at any time, [Labor Code § 5307.5(b); Cal. Code Regs., tit. 8, § 10380] the California Self-Insurers' Security Fund, much like the California Insurance Guarantee Association, rather than functioning as a party defendant separate and distinct from the exiting insolvent self-insured employer, steps in the shoes of that employer and assumes its liability, thereby negating the judicial requirement of a formal joinder as a party defendant. In addition, to require its joinder in every case involving a liquidated self-insured employer places an exceptional burden on already overwhelmed limited judicial resources and frustrates its essentially constitutional purpose of providing expeditious delivery and resolution of litigated workers' compensation cases.

Accordingly, the more appropriate pathway would be by way of notice of change of administrator to ensure that the Official Address Record properly reflects all interested parties. Alternatively, to avoid overtaxing limited judicial resources, a petition for consolidation and joinder could also better serve the requested relief sought.

While the undersigned WCJ will update the official address record to reflect TRISTAR CONCORD as a party participant, the Defendant's requested relief for a formal joinder will be denied.

(Order Denying Petition for Joinder, December 2, 2024.)

SISF seeks reconsideration, or in the alternative removal from the order denying joinder.

## **DISCUSSION**

### **I.**

Former Labor Code section 5909<sup>1</sup> provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days from the date of filing. (Lab. Code, § 5909.) Effective July 2, 2024, section 5909 was amended to state in relevant part that:

(a) A petition for reconsideration is deemed to have been denied by the appeals board unless it is acted upon within 60 days from the date a trial judge transmits a case to the appeals board.

(b) (1) When a trial judge transmits a case to the appeals board, the trial judge shall provide notice to the parties of the case and the appeals board.

(2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

(§ 5909.)

Under section 5909(a), the Appeals Board must act on a petition for reconsideration within 60 days of transmission of the case to the Appeals Board. Transmission is reflected in Events in the Electronic Adjudication Management System (EAMS). Specifically, in Case Events, under Event Description is the phrase "Sent to Recon" and under Additional Information is the phrase "The case is sent to the Recon board."

Here, according to Events, the case was transmitted to the Appeals Board on December 18, 2024, and 60 days from the date of transmission is Sunday, February 16, 2025, which by operation of law means this decision is due by Tuesday February 18, 2025. (Cal. Code Regs., tit. 8, § 10600.)

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<sup>1</sup> Unless otherwise stated, all further statutory references are to the Labor Code.

This decision is issued by or on February 18, 2025, so that we have timely acted on the Petition as required by section 5909(a).

Section 5909(b)(1) requires that the parties and the Appeals Board be provided with notice of transmission of the case. Transmission of the case to the Appeals Board in EAMS provides notice to the Appeals Board. Thus, the requirement in subdivision (1) ensures that the parties are notified of the accurate date for the commencement of the 60-day period for the Appeals Board to act on a petition. Section 5909(b)(2) provides that service of the Report and Recommendation shall be notice of transmission.

According to the proof of service for the Report and Recommendation by the WCJ, the Report was served on December 18, 2024, and the case was transmitted to the Appeals Board on December 18, 2024. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties were provided with the notice of transmission required by section 5909(b)(1) because service of the Report in compliance with section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on December 18, 2024.

## II.

A petition for reconsideration may properly be taken only from a “final” order, decision, or award. (Lab. Code, §§ 5900(a), 5902, 5903.) A “final” order has been defined as one that either “determines any substantive right or liability of those involved in the case” (*Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 1180; *Safeway Stores, Inc. v. Workers’ Comp. Appeals Bd. (Pointer)* (1980) 104 Cal.App.3d 528, 534-535 [45 Cal.Comp.Cases 410]; *Kaiser Foundation Hospitals v. Workers’ Comp. Appeals Bd. (Kramer)* (1978) 82 Cal.App.3d 39, 45 [43 Cal.Comp.Cases 661]) or determines a “threshold” issue that is fundamental to the claim for benefits. (*Maranian v. Workers’ Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1070, 1075 [65 Cal.Comp.Cases 650].) Interlocutory procedural or evidentiary decisions, entered in the midst of the workers’ compensation proceedings, are not considered “final” orders. (*Id.* at p. 1075 [“interim orders, which do not decide a threshold issue, such as intermediate procedural or evidentiary decisions, are not ‘final’ ”]; *Rymer, supra*, at p. 1180 [“[t]he term [‘final’] does not include intermediate procedural orders or discovery orders”]; *Kramer, supra*, at p. 45 [“[t]he term [‘final’] does not include intermediate procedural orders”].) Such interlocutory decisions include, but are not limited to, pre-trial orders regarding evidence, discovery, trial setting, venue, or similar issues.

Here the issue is denial of a request for an order of joinder. This is a pre-trial order and not a final order, which is only subject to removal.

Removal is an extraordinary remedy rarely exercised by the Appeals Board. (*Cortez v. Workers' Comp. Appeals Bd.* (2006) 136 Cal.App.4th 596, 600, fn. 5 [71 Cal.Comp.Cases 155, 157, fn. 5]; *Kleemann v. Workers' Comp. Appeals Bd.* (2005) 127 Cal.App.4th 274, 281, fn. 2 [70 Cal.Comp.Cases 133, 136, fn. 2].) The Appeals Board will grant removal only if the petitioner shows that substantial prejudice or irreparable harm will result if removal is not granted. (Cal. Code Regs., tit. 8, § 10843(a); see also *Cortez, supra*; *Kleemann, supra*.) Also, the petitioner must demonstrate that reconsideration will not be an adequate remedy if a final decision adverse to the petitioner ultimately issues. (Cal. Code Regs., tit. 8, § 10843(a).)

### III.

Pursuant to section 3743:

- (a) Upon order of the director pursuant to Section 3701.5, the fund shall assume the workers' compensation obligations of an insolvent self-insurer.
- (b) Notwithstanding subdivision (a), the fund shall not be liable for the payment of any penalties assessed for any act or omission on the part of any person other than the fund, including, but not limited to, the penalties provided in Section 132a, 3706, 4553, 4554, 4556, 4557, 4558, 4601.5, 5814, or 5814.1.
- (c) The fund shall be a party in interest in all proceedings involving compensation claims against an insolvent self-insurer whose compensation obligations have been paid or assumed by the fund. The fund shall have the same rights and defenses as the insolvent self-insurer, including, but not limited to, all of the following:
  - (1) To appear, defend, and appeal claims.
  - (2) To receive notice of, investigate, adjust, compromise, settle, and pay claims.
  - (3) To investigate, handle, and deny claims.

(§ 3743 (emphasis added).)

All parties to a workers' compensation proceeding retain the fundamental right to due process and a fair hearing under both the California and United States Constitutions. (*Rucker v. Workers' Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157-158 [65 Cal.Comp.Cases 805].) A fair hearing is "... one of 'the rudiments of fair play' assured to every litigant ..." (*Id.* at 158.) As stated by the California Supreme Court in *Carstens v. Pillsbury* (1916) 172 Cal. 572, [The] commission, ... must find facts and declare and enforce rights and liabilities, -- in short, it acts as a court, and it must observe the mandate of the constitution of the United States that this cannot be done except after due process of law. (*Id.* at 577.)

A fair hearing includes but is not limited to the opportunity to call and cross-examine witnesses; introduce and inspect exhibits; and to offer evidence in rebuttal. (See *Gangwish v. Workers' Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal. Comp. Cases 584]; Rucker, *supra*, at 157-158 citing *Kaiser Co. v. Industrial Acci. Com. (Baskin)* (1952) 109 Cal.App.2d 54, 58 [17 Cal.Comp.Cases 21]; *Katzin v. Workers' Comp. Appeals Bd.* (1992) 5 Cal.App.4 703, 710 [57 Cal.Comp.Cases 230].)

The WCJ shall “. . . make and file findings upon all facts involved in the controversy[.]” (§ 5313; see also, *Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc).)

Section 5313 requires a WCJ to state the “reasons or grounds upon which the determination was made.” The WCJ’s opinion on decision “enables the parties, and the Board if reconsideration is sought, to ascertain the basis for the decision, and makes the right of seeking reconsideration more meaningful.” (*Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc), citing *Evans v. Workmen’s Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350, 351].) A decision “must be based on admitted evidence in the record” (*Hamilton, supra*, at p. 478), and must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952(d); *Lamb v. Workmen’s Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza v. Workmen’s Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen’s Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) As required by section 5313 and explained in *Hamilton*, “the WCJ is charged with the responsibility of referring to the evidence in the opinion on decision, and of clearly designating the evidence that forms the basis of the decision.” (*Hamilton, supra*, at p. 475.)

Here, the WCJ summarily issued an order denying the petition for joinder without issuing a notice of intent and without conducting a hearing on the petition. (Cal. Code Regs., tit. 8, § 10832.) No record supports the order denying joinder; accordingly, due process requires that we grant removal, rescind the order denying joinder, and return this matter to the trial level for further proceedings.

For the foregoing reasons,

**IT IS ORDERED** that SISF's Petition for Reconsideration of the Order issued on December 2, 2024, is **DISMISSED**.

**IT IS FURTHER ORDERED** that SISF's Petition for Removal of the Order issued on December 2, 2024, is **GRANTED**.

**IT IS FURTHER ORDERED** as the Decision After Removal of the Appeals Board that the Order issued on December 2, 2024, is **RESCINDED** and this matter is **RETURNED** to the trial level for further proceedings.

**WORKERS' COMPENSATION APPEALS BOARD**

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

**I CONCUR,**

/s/ KATHERINE A. ZALEWSKI, CHAIR

CRAIG SNELLINGS, COMMISSIONER  
*CONCURRING NOT SIGNING*



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**February 18, 2025**

**SERVICE MADE ON THE ABOVE DATE ON THE PERSONS LISTED BELOW AT THEIR ADDRESSES SHOWN ON THE CURRENT OFFICIAL ADDRESS RECORD.**

**LAURA RODRIGUEZ  
LEXA LAW  
GALE SUTOW & ASSOCIATES  
CALIFORNIA SELF-INSURERS' SECURITY FUND**

**EDL/mc**

I certify that I affixed the official seal of the Workers' Compensation Appeals Board to this original decision on this date. *MC*

